

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:

CHAPTER 13 CASE NO.:
05-03072-8-JRL

FRED W. BRISSON, JR.,
SUSAN BRISSON,
Debtors.

MOTION TO DECLARE MORTGAGE CURRENT

NOW COMES, Debtors, by and through their undersigned attorney, and move the court for an Order declaring mortgage current, and show the following:

1. The debtors filed a Chapter 13 Bankruptcy petition and plan on April 14, 2005.
2. Debtors' Chapter 13 Plan proposed payments on residential mortgage to US Bank outside the plan with pre-petition arrears inside plan.
3. Upon information and belief, creditor US Bank submitted a proof of claim to the Chapter 13 Trustee for approximately \$13,750.00 for pre-petition arrears with an incorrect case number.
4. Upon information and belief, proof of claim submitted by US Bank was not filed in their case.
5. After receiving notice that no proof of claim was filed, debtor filed a proof of claim for \$6,500.00.
6. Upon information and belief, creditor US Bank was notified that debtor had filed proof of claim for pre-petition arrears in this case.
7. Debtors completed Chapter 13 plan and received a discharge on June 16, 2008.
8. Final Report and Account filed by Chapter 13 Trustee reflected \$6,500.00 pre-petition arrearage claim was fully paid inside Chapter 13 Plan.
9. Debtors were current with their post-petition direct payments to US Bank at the time of their discharge.

10. Since the Chapter 13 discharge, debtors have remained current with direct payments to US Bank.

11. Recently US Bank contacted debtors to indicate that they need to pay approximately \$9,000.00 and US Bank indicated that it will not accept any monthly payments.

12. Debtors are requesting entry of an Order declaring their mortgage current and requiring US Bank to accept monthly payments.

13. In the alternative, debtors are requesting that their Chapter 13 Plan be modified as required to pay pre-petition arrears to US Bank.

14. Debtors reserve the right to object to any pre-petition arrears claim filed by US Bank.

WHEREFORE, Debtors pray the court as follows:

1. For entry of an Order declaring their mortgage current and requiring US Bank to accept monthly payments.

2. In the alternative for entry of an Order requesting that the debtors' plan be modified as required to pay pre-petition arrears to US Bank.

3. For such other and further relief as the court deems just and proper.

This the 21st day of May, 2009.

Law Offices of Bruce F. Jobe, P.A.

/s/Bruce F. Jobe

Bruce F. Jobe

Attorney for Debtor

4312 Ludgate Street

Lumberton, NC 28358

Telephone: (910)739-1010

VERIFICATION

I declare under penalty of perjury that I have read the foregoing Motion, and it is true and correct to the best of my knowledge, information and belief.

Dated: 5/14/09

/s/Fred W. Brisson, Jr.
Fred W. Brisson, Jr.

Dated: 5/14/09

/s/Susan Brisson
Susan Brisson

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:

CHAPTER 13 CASE NO.:
05-03072-8-JRL

FRED W. BRISSON, JR.,
SUSAN BRISSON,
Debtors

NOTICE OF MOTION

NOTICE IS HEREBY GIVEN of the Motion to Declare Mortgage Current, by and through its attorney, in the above captioned case; and

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed provided no response and request for hearing is made by the Debtor or other parties in interest in writing to the Clerk of the Court within twenty (20) days from the date of this Notice; and

FURTHER NOTICE IS HEREBY GIVEN that if a response and a request for a hearing is filed by the Debtor or other parties in interest named herein in writing within the time indicated, a hearing will be conducted on the Motion and response thereto at a date, time, and place to be later set by this Court and all interested parties will be notified accordingly. If no request for a hearing is timely filed, the Court may rule on the Motion and response thereto ex parte without further notice.

Respectfully submitted this 21st day of May, 2009.

Law Offices of Bruce F. Jobe, P.A.

/s/Bruce F. Jobe
Bruce F. Jobe
Attorney for Debtor
4312 Ludgate Street
Lumberton, NC 28358
(910)739-1010
NC State Bar #9288

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:

CHAPTER 13 CASE NO.:
05-03072-8-JRL

FRED W. BRISSON, JR.,
SUSAN BRISSON,
Debtors

CERTIFICATE OF SERVICE

I, Bruce F. Jobe, certify that I am, and at all times during the service of process was, not less than 18 years of age, and not a party to the matter concerning which service of process was made. I further certify that the service of a copy of this MOTION TO DECLARE MORTGAGE CURRENT AND NOTICE OF MOTION on May 21, 2009, by regular, first class United States mail, postage fully pre-paid, addressed to individuals listed:

Fred W. Brisson, Jr.
Susan Brisson
PO Box 171
Dublin, NC 28332

US Bank Home Mortgage
Managing Agent
PO Box 20005
Owensboro, KY 42304

Richard M. Stearns (by cm/ecf)
Chapter 13 Trustee
PO Box 2218
Kinston, NC 28502

Matthew McKee
Attorney at Law
2701 Coltsgate Rd Ste 300
Charlotte, NC 28211

Marjorie K. Lynch (by cm/ecf)
Bankruptcy Administrator
PO Box 3758
Wilson, NC 27895-3758

Under penalty of perjury, I declare that the foregoing is true and correct.

Law Offices of Bruce F. Jobe, P.A.

/s/Bruce F. Jobe
Bruce F. Jobe
Attorney for Debtor
4312 Ludgate Street
Lumberton, NC 28358
(910)739-1010